

MENTAL HEALTH AND DISABILITY SERVICES COMMISSION

May 21, 2015 - 9:30 am to 1:00 pm
Polk County River Place, Room 1
2309 Euclid Ave, Des Moines, Iowa
MEETING MINUTES

MHDS COMMISSION MEMBERS PRESENT:

Thomas Bouska
Thomas Broeker
Richard Crouch
Jody Eaton
Marsha Edgington
Lynn Grobe
Kathryn Johnson
Betty King

Geoffrey Lauer
John Parmeter
Deb Schildroth
Patrick Schmitz
Rebecca Schmitz
Marilyn Seemann
Jennifer Sheehan

MHDS COMMISSION MEMBERS ABSENT:

Senator Mark Costello
Representative Dave Heaton
Representative Lisa Heddens
Sharon Lambert

Senator Liz Mathis
Brett McLain
Rebecca Peterson
Michael Polich

OTHER ATTENDEES:

Theresa Armstrong	MHDS, Bureau Chief Community Services & Planning
Julie Bak	Mid Iowa Behavioral Health
Jim Friberg	Department of Inspections and Appeals
Julie Jetter	MHDS, Bureau of Community Services & Planning
Gretchen Kraemer	Iowa Attorney General's Office
Harry Rossander	Dept. of Human Services, Bureau Chief Policy Coordination
Peter Schumacher	MHDS, Community Services & Planning/CDD
Rick Shults	MHDS Division Administrator

Welcome and Call to Order

Patrick Schmitz called the meeting to order at 9:30 am and led introductions. Quorum was established with twelve members present. No conflicts of interest were identified for this meeting.

Approval of Minutes

Jody Eaton mentioned that the electronically submitted minutes mentioned that Southwest Iowa MHDS had a balance of \$115 million, when that balance is actually statewide. The correct information is reflected in the printed copy distributed at the meeting, and a corrected electronic copy will be sent out after the meeting. Richard Crouch made a motion to approve the minutes of the April 16 meeting, with the correction, as presented. Tom Broeker seconded the motion. The motion passed unanimously.

Review of Commission Duties – by Rick Shults

Rick Shults thanked the members of the Commission for serving and informed new members that Commission membership requirements and duties are outlined in Iowa Code 225C.5, available at <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=iowaCode&input=225C.5> and 225C.6 available at <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=iowaCode&input=225C.6>. The Commission advises the division of Mental Health and Disability Services (MHDS) and the Department of Human Services, adopts rules and standards for services, community mental health centers (CMHCs), and case management. If another governmental body does not have responsibility for setting standards for an area relating to MHDS, then the Commission can have the authority to set standards for that area. The Commission also ensures that appeals processes are in place.

The Commission is responsible for annual and biennial reporting. The Commission reports on the activities of the Commission over the year, recommendations for changes to state law, and advising MHDS and DHS on budgets and appropriations. Rick recommended that the Commission submit its recommendation earlier rather than later. The sooner the recommendation is received by the director, the more of an impact it will have in the budget plan.

Rick said that he believes the Commission embraces a vision for Iowans with mental illness and disabilities, and shares a desire for them to experience recovery, and that they live safe, healthy, and successful lives in homes that they choose. The Commission brings diversity to the table in terms of points of view, experience, and opinions. Rick expressed appreciation for the degree of respectfulness and civility with which the Commission does business. Rick said there is no need to apologize for asking difficult questions, and that it is the manner in which those questions are asked. The Commission has been able to negotiate very difficult and personal topics in a polite and respectful manner. Taking the diverse points of view and having civil discussions on this shared vision has allowed the Commission to work towards constructive solutions. This is a reflection of the professionalism and the desire of the members.

Rick acknowledged that the members are all busy people and thanked the members for the time they have set aside to participate in the Commission meetings and work.

Geoff Lauer asked Rick if the Commission duties allow The Commission to draft formal letters to MHDS and DHS on issues of interest. These may be letters of concern or support. Rick answers that he did not believe it would be inappropriate, but that he plans to share important issues with the Commission whether or not they are formalized in a letter.

Geoff noted that code mentions that the Commission is responsible for advising the Governor and the General Assembly on budgets and appropriations, and that traditionally, the Commission has done that as part of its reporting activities within a set timeframe. He asked whether this was the only time the Commission would be able to advise the Governor or the General Assembly, or whether they would be allowed to draft a letter to them regarding a potential budgetary concern, or a decision that could significantly impact service delivery. Rick answered that if the Commission were to do so, it would have to be within a very specific framework that Gretchen Kraemer will describe later in the meeting.

Review of Open Meetings, Conflicts of Interest, and Ethical Considerations of Commission Membership – by Gretchen Kraemer, Attorney General's Office

Gretchen Kraemer explained that the Commission as a state commission is governed by open meetings laws which are in Iowa Code Chapter 21, available at <https://coolice.legis.iowa.gov/coolice/default.asp?category=billinfo&service=iowacode&ga=83&input=21>. There must be an agenda for each meeting. Agendas must be posted at least twenty-four hours before the meeting and available to the public. The agenda is the invitation to the public to come to the meeting. In the past, there have been questions about taking agenda items out of order during the meeting when presenters are running late or not available. Commissions are allowed to take items out of order, but Gretchen said that this should be done in a way that preserves the agenda as much as possible. The concern is that members of the public will miss something of interest if it is presented at a different time than what is posted on the agenda. If something important comes up that is not on the agenda, Gretchen encouraged the Commission to push it to another meeting so that the public can have adequate notice. Phone participation is allowed as long as the phone number is published and the call is done via speaker phone. Electronic participation and email participation is also valid, but such emails are public information and subject to Freedom of Information Act requests.

Open meetings are required to have a period during the meeting for public comment. This could be a specific period of time reserved for public input, or the Commission has, as a matter of practice, allowed for public input throughout its meetings, which is also acceptable.

Committees within the Commission can meet and are not governed by open meeting laws. They must have less than a quorum, and they may only make recommendations. The Commission must vote on any decisions. Commission members can discuss the business of the Commission in informal or social settings as long as less than a quorum is present. Once there is a quorum, open meeting laws apply.

Conflicts of interest arise when a member of the Commission has a personal or professional stake in a decision being made by the Commission. If a matter comes to the Commission that would affect a member personally or their business, the member must abstain from any vote on the subject.

Patrick Schmitz asked if conflicted members should abstain from discussion as well as votes. Gretchen advised that the greater the conflict, the less a conflicted member should participate, as engaging in discussion could influence the outcome of the vote.

The Commission is allowed to lobby, however it must follow certain rules. The Commission must elect one representative to be the designated lobbyist, which is traditionally the chair. The designated person must register as a lobbyist, and the Commission must vote on all official Commission positions. Individual members are still allowed to lobby as private citizens, but cannot claim to represent the Commission while doing so.

Geoff Lauer asked if the Commission could designate a lobbying representative other than the chair. Gretchen answered that her recollection was that it had to be the chair or vice chair. The answer is specified in Iowa Code 68B.5A.

Review of the Administrative Rule-making Process – by Harry Rossander

The Bureau of Policy Coordination manages all appeals in DHS (approximately 8000 per year). The bureau does not perform the appeals, but works with the Attorney General's office and the

Department of Inspections and Appeals to manage the process of the appeal. The bureau manages approximately 5000 exceptions to statewide policy and 2400 forms that are currently active.

The administrative rule-making process is a very intentional and careful process designed to promote transparency and to invite public participation. It is not a fast process. The Administrative Procedures Act in Iowa Code Chapter 17A, available at <https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=iowaCode&input=17A>, governs who has the right to make rules. Harry said that last week, the Governor launched a new website, www.rules.iowa.gov, which allows members of the public to see and participate more easily in the rule-making process. A rule is something that implements a federal or state law or policy, interprets a federal or state law or policy, prescribes a state law or policy, describes an agency's organization, procedure, practice requirements, or how state laws or policies will be enforced.

Administrative rules have the effect of law. Rule-making agencies do not have independent law-making authority, and can only act within the restrictions of statute. Rules are published in the Iowa Administrative Code and the Iowa Administrative Bulletin.

There are three different rule-making bodies in DHS. The Council on Human Services, The Mental Health and Disability Services Commission, and the Hawk-I Board all have the authority to make rules with regards to DHS programs. Who has authority for a specific rule depends on which program is being affected.

Each rule draft comes to the Bureau of Policy Coordination in a rule packet with a fiscal impact statement. The Bureau will review the rule, and give notice to the public. Every comment is received, read, and compiled. All comments are published along with the Department's response to them.

The schedule for rule-making process is rigid and runs on a specific calendar. There is an initial nineteen day period for a proposed rule to be edited and published in the Iowa Administrative Bulletin. Once published, it is available for comment for thirty-five days. After all comments received have been compiled and addressed, there is another nineteen days for the final rule to be published, followed by a thirty-five day implementation period. This schedule may be extended by weeks or months depending on how many comments there are, or how quickly the proposed rule can be proofed. The schedule can also be extended depending on how often the rule-making body meets, and when the Administrative Rule Review Committee (ARRC) can notice the rule. Harry said that on average, the entire process takes around six months to complete.

It is possible to speed up the process by waiving the comment period. These emergency rule-making provisions may be used if the comment period would be unnecessary, impractical, or contrary to the public's interests. Harry advised against waiving the comment period unless it is absolutely necessary to do so. It is also possible to waive the implementation period if the legislation permits it or if it is in the public interest. Harry said this has been done for rules on poverty levels that come from federal code and need to be implemented quickly. These are implemented as emergency rules, which waive comment period and implementation period. When the emergency rule-making process is used, the rule becomes effective, and then goes through a regular process with the comment and implementation periods while the rule is in effect. Emergency rules can be implemented as quickly as two months and normally take around four months.

When the need for a rule change is identified MHDS staff develops a proposal. Harry said the proposal comes to the Commission for approval. The Commission must approve the proposal for it to become a notice of intended action.

Geoff Lauer asked when a rule goes to the MHDS Commission, and when a rule goes through the Council on Human Services. Harry answered that it depends on the program the rule is concerning. Rules on mental health and disability services come to the Commission, and rules on Medicaid and other DHS programs will go to the Council on Human Services.

After the Commission gives approval to file the rule, it gets published in the Iowa Administrative Bulletin and is open for public comment. The ARRC reviews the notice. If there are comments, MHDS staff collates, reviews, and drafts responses to them. Then the Bureau of Policy Coordination will edit the preamble to reflect that the rule is no longer intended action, but adopted and filed. If there are no changes due to comments, then the Commission will vote to adopt the rule. If the Commission adopts the rule, it gets filed, and the editors have nineteen days to prepare the final rule for publication in the Administrative Bulletin. The rule then goes to the ARRC, who can approve the rule, object to the rule, or delay the implementation of the rule.

Commission Planning Calendar – by Patrick Schmitz

Patrick Schmitz said that last year, Connie Fanselow organized the Commission to have a much more mindful approach with regards to the reporting duties to ensure they were well-researched and prepared on time.

The Legislative Priorities Committee – (Lynn Grobe, Geoff Lauer, Marilyn Seeman, Tom Bouska, Rebecca Schmitz, and John Parmeter), reports annually.

Kathy Johnson asked if the Legislative Priorities Committee has an annual report, or a biennial report. Patrick answered that the Legislative Priorities Committee prepares a report every year.

Kathy asked if the committees who only have biennial reporting duties actively work in the off years. Patrick answered that in the past they have not, but there is no reason why they should not meet. Theresa Armstrong commented that committees had a different process last year than they have in the past, and if the committees wanted to continue in order to prepare, then that would be up to the members to decide. Patrick said that if the biennial committees wanted to continue meeting, then they may not have to work with the intensity they needed to before. Kathy mentioned that committees were working with information gathered after the fact last year, and if committees had been working more consistently over the course of two years, it may have eased the burden.

Geoff Lauer asked if there was a committee chair. Patrick answered that either one member is selected from the committee, or one member tends to take the lead. Committees do not need to elect a chair, but they could.

Geoff asked if committees were allowed to meet by phone. Patrick answered that they were, and last year there was time set aside in the agenda for committee work.

The County/Regional Services Committee – (Tom Bouska, Kathryn Johnson, Jody Eaton, Richard Crouch, Jennifer Sheehan, and Geoff Lauer), reports biennially.

The Mental Health Institution/State Resource Center Committee – (Marsha Edgington, Marilyn Seeman, Tom Bouska, and Richard Crouch), reports biennially.

The Cost Increase and Communications Committee – (Tom Broeker, Betty King, Jody Eaton, and Jennifer Sheehan), advises annually

Patrick recommended that the Cost Increase and Communication Committee begin working sooner to ensure that its recommendation is submitted on time. Last year's recommendation relied on more research than it had in the past, and produced a much better recommendation.

Update on MHDS Regions – by Julie Jetter

Julie reviews the requirements for MHDS regions with the Commission. Regions were required to be composed of at least three counties, be contiguous, or have a long-standing relationship of at least two years of coordination on MHDS services. Regions had to be able to provide core services, have a Community Mental Health Center (CMHC) or Federally Qualified Health Center (FQHC) that could provide behavioral health services, and have an inpatient hospital or MHI within 100 miles of the region. The regional structure had to show clear lines of accountability. The end result was a state with fifteen regions. There was one county, Polk, that was granted an exception because they could meet all of the listed requirements without joining with other counties. There is one region, Mid Iowa which is composed of Marion and Mahaska Counties, which has been granted provisional approval for one year with the opportunity to be renewed for a second year if they are making progress. There has been one county, Cherokee, which moved from Sioux Rivers MHDS to Rolling Hills Community Services Region.

Regions are very diverse ranging in size from one to twenty-two counties and from 30,000 people to roughly 576,000 people. Regions are required to join funding through a 28E agreement. Regions had to have these agreements in place, and their boards elected on July 1 of last year. All regions completed these requirements on time except for the provisional region as they are on a different calendar. Last April, regions turned in their second Annual Service and Budget Plan, and they are currently under review at the Department. In December, regions will submit their Fiscal Year 2015 Annual Report to the Department on what they did and how they did it. Regions were required to decide whether they were going to pool funds, or keep funds in their respective county accounts, but use them all for regional services. Julie says that the decision was simpler than the implementation, but that regions are working their way through it.

The Iowa Health and Wellness Plan (IHAWP) has been implemented and last year enrollment increased by 37%. This program funds services like inpatient psychiatric services, outpatient therapy, evaluation and management, emergency room visits and habilitation. These are services that counties used to fund, which frees up funding for regional services. Along with core services, legislation established a set of additional or “core plus” services such as crisis services and justice involved services. This has led to the development of a diverse group of services around the state to better serve specific regional needs such as mobile crisis response and tele-psychology in jails and local emergency rooms.

There are new evidence-based practices that regions will be required to provide including trauma-informed care and services for individuals with multi-occurring conditions.

John Parmeter asked whether payers, providers, or regions decide which services are offered. Julie answered that regions are required to provide non-Medicaid services and mental health and disability services to the non-Medicaid population in their regions.

Kathy Johnson mentioned that there is a lot of variation on how core services are provided, and asked if there is guidance on how they should be provided. Patrick answered that the rules are broad and allow for variation in how services are provided. Theresa Armstrong said that there is nothing in Iowa Code that says a region cannot be a provider.

Geoff Lauer asked if the Commission would receive a report on the MHDS regions when the annual reports are submitted. Theresa answered that there would certainly be a verbal report to the Commission, and the department will determine the best way to present that information when the reports come in. The regional reports are publicly available.

Geoff asked for a more comparative analysis of regions, the services they provide, and how well. Geoff said that MHDS would be the body most capable of performing that analysis. Theresa answered that MHDS has a map of regions providing crisis services and justice involved services that the Department could share. DHS will work to find the best way to present that information to the Commission.

Planning for June Meeting

There was a request for a legislative wrap-up.

Committee work time, and data gathering/requests.

Kathy Johnson requested a follow-up on crisis stabilization and whether providers have been pursuing accreditation. She acknowledges that it may be too early.

Geoff Lauer requested information on the advantages and disadvantages of registering to lobby. Geoff expressed concern that the Commission would not be able to take an official position on legislative issues without first registering as a lobbyist. Patrick said that his personal preference would be to not register as the Commission has historically remained neutral and has very diverse membership. The Commission has very diverse membership with diverse perspectives, which makes it difficult to find agreement on a topic. Geoff said that he respects Patrick's concerns, and that there is a tension between education, advocacy, and lobbying. The Commission's charge to advise the General Assembly could be seen as lobbying, and if the Commission were to be accused of lobbying, being registered as a lobbying organization would serve as protection against the appearance of inappropriateness. Tom Broeker said that once the Commission registers as a lobbyist, the Commission would be seen as a lobbyist and that he is not comfortable with that image. John Parmeter said that the Commission has a very close relationship with the Department, and worries that registering to lobby might strain that close relationship. Tom Bouska expressed concern that as a representative of the Department, lobbying may present a conflict of interest.

Public Comment

There was no public comment.

The meeting was adjourned at 11:45 am.

Minutes respectfully submitted by Peter Schumacher.